

MARINE MAMMAL PROTECTION ACT REAUTHORIZATION

MAY 16 (legislative day, MAY 14), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee of Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2584]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2584) to provide authorization of appropriations for activities carried out under the Marine Mammal Protection Act of 1972, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, authorizes \$12,755,000 for activities of three agencies pursuant to the Marine Mammal Protection Act of 1972 for fiscal year 1985. The bill also provides authorizations for fiscal years 1986 through 1988. In addition, the bill amends the act's provisions dealing with the Marine Mammal Commission and the tuna-porpoise issue.

BACKGROUND AND NEEDS

The current authorization for the Marine Mammal Protection Act of 1972 expires at the end of fiscal year 1984. It is necessary to reauthorize the act in order to permit continued appropriations.

In addition, the bill addresses two issues concerning the operation of the Marine Mammal Commission. The bill requires that the list of potential nominees submitted to the President by the four agencies charged with responsibility for reviewing candidates be a list which has been unanimously agreed upon by those four agencies after consultation among them. The purpose of this provision is to make sure that the President is receiving a list of candi-

dates which the four agencies agree contains the best available people.

The bill also specifies that the Marine Mammal Commission should be staffed at a level of not fewer than 11 employees. This provision addresses a staffing shortage which has arisen at the Commission. The Commission currently operates with only 8 staff, whereas it operated with 11 during the late 1970's. This reduction has occurred despite the fact that the duties of the Commission are certainly no less broad now than 5 years ago.

The bill also contains a provision to extend statutorily the marine mammal permit held by the American Tunaboat Association. This permit allows the tuna industry to take a certain number of porpoise incidental to tuna fishing operations in the Eastern Tropical Pacific Ocean. The permit is being extended for several reasons, one of which is the fact that the industry has done a very commendable job of reducing porpoise mortality since the early 1970's. The incidental take level has been reduced from a number approaching 400,000 per year to less than the allowed quota of 20,500 per year.

In addition, the existing permit contains the requirement that the tuna industry accept the placement of Federal observers aboard tuna vessels. These observers are charged with responsibility for monitoring the industry's compliance with the act and the terms of the marine mammal permit. They also gather a variety of scientific data regarding porpoise stocks and tuna-porpoise interaction.

The question of observers has been contentious for many years. Recent litigation of the issue resulted in a Federal court upholding the statutory authority of the Department of Commerce to place observers on tuna vessels. This case has now gone to the Supreme Court. It is the view of the Committee that the legislative extension of the marine mammal permit is equivalent to a legislative reassertion of Congress' intent that the Department of Commerce have the authority to place observers aboard tuna vessels for enforcement purposes.

Finally, the Committee is concerned that U.S. vessels have been subject to tuna-porpoise regulation for years while foreign vessels have not. Therefore, tougher requirements are needed in the act to ensure that nations whose nationals want to import tuna into the United States require their own fishermen to adhere to standards for porpoise protection equal to our own.

LEGISLATIVE HISTORY

S. 2584 was introduced by Senator Packwood on April 24, 1984 and was co-sponsored by Senator Hollings. The original bill consisted of a 4-year reauthorization of the act. Hearings were held on the bill on April 26. The hearings were conducted jointly by the full Committee and the National Ocean Policy Study.

On May 8, 1984, the Committee ordered the bill reported with an amendment in the nature of a substitute and an amendment to the title. The substitute language offered during the Committee's mark-up included not only the 4-year reauthorization but also substantive amendments to the act.

SUMMARY OF MAJOR PROVISIONS

Sections 1, 2 and 3 of the bill contain the reauthorization of the act, and the amendments dealing with the operation of the Marine Mammal Commission which were described earlier in the Background and Needs section of this report.

Section 4 is the major provision of the bill. This is the section which provides the legislative extension of the marine mammal permit held by the American Tunaboat Association.

Section 4:

(1) Requires the Secretary of Commerce to obtain documentation that foreign nations wishing to export tuna to the United States are conducting tuna fishing operations in a manner which is no less protective of marine mammal populations than are the techniques used by the American tuna fleet. Nations which do not provide such documentation would be prohibited from exporting tuna to the United States.

(2) Legislatively extends the marine mammal permit held by the American Tunaboat Association.

(3) Requires the Secretary of Commerce to carry out a program of research on marine mammal populations to monitor the effect tuna fishing is having on them. If these populations are being adversely affected, the Secretary is required to take appropriate action to terminate the adverse impact.

(4) Requires the Secretary of Commerce to report on the results of the research outlined in paragraph 3 and to reference any funding problems which may be hampering such research.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 10, 1984.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2584, a bill to provide authorization of appropriations for activities carried out under the Marine Mammal Protection Act of 1972, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2584.

2. Bill title: A bill to provide authorization of appropriations for activities carried out under the Marine Mammal Protection Act of 1972, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, May 8, 1984.

4. Bill purpose: S. 2584 authorizes appropriations for marine mammal conservation and management activities of the Marine Mammal Commission and the departments of Commerce and the Interior for fiscal years 1985 through 1988.

5. Estimated cost to the Federal Government:

(By fiscal years, in millions of dollars)

	1985	1986	1987	1988	1989
Authorization level.....	12.8	13.4	14.1	14.8
Estimated outlays.....	9.2	12.5	13.7	14.5	4.1

The costs of this bill fall within budget function 300.

BASIS OF ESTIMATE

Authorization levels are as stated in the bill. For purposes of this estimate, it is assumed that the full amounts authorized will be appropriated prior to the beginning of each fiscal year. Outlays are estimated on the basis of historical spending patterns for these activities.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

In general the bill retains the status quo regarding operation of the Marine Mammal Protection Act of 1972. Therefore, there will be little regulatory impact.

NUMBER OF PERSONS COVERED

Section 4 of the bill requires the Secretary of Commerce to make certain determinations regarding methods by which foreign nationals are conducting tuna fishing operations to make sure they are in accord with accepted U.S. standards of marine mammal protection. If it is found that such standards are not being met, then the Secretary shall take such action as necessary to prohibit the importation of tuna from those nations. In this sense, there will be a regulatory impact of foreign nationals who wish to export tuna to the United States.

The bill will have no impact domestically in terms of bringing more U.S. nationals under Federal regulation.

ECONOMIC IMPACT

Section 4 of the bill could have an economic impact on the tuna industries of those foreign nations which currently export tuna to the United States. This impact would only occur in the event they are unable to meet the requirements outlined in the bill.

The domestic tuna industry will actually realize a savings from the bill since section 4 provides a legislative extension of the existing marine mammal permit. This means the U.S. tuna industry will not have to make its case for permit renewal before an administrative law judge hearing. The tuna industry has estimated that not having to go through such a hearing will save between \$700,000 and \$1 million.

PRIVACY

There will be no privacy impact. While the legislative extension of the marine mammal permit does legislatively reinforce the requirement that Federal observers be placed aboard tuna vessels, this provision does not impose a new burden since existing law already authorizes the placement of such observers aboard tuna vessels.

PAPERWORK

The bill has two paperwork impacts. Foreign nations wishing to export tuna to the United States must provide documentation to the Secretary of Commerce that they are conducting tuna fishing operations in a manner which is in keeping with the conservationist methods used by the domestic fleet.

The bill also requires the Secretary of Commerce to conduct research into the status of porpoise stocks in the Eastern Tropical Pacific Ocean and to report on the results of such research.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Provides the following authorizations for the purpose of permitting appropriations to carry out the act:

	1985	1986	1987	1988
Department of Commerce.....	\$9,300,000	\$9,800,000	\$10,300,000	\$10,800,000
Department of the Interior.....	2,300,000	2,400,000	2,500,000	2,650,000
Marine Mammal Commission.....	1,155,000	1,225,000	1,275,000	1,325,000

In providing these authorizations, the Committee wishes to specify three particular areas of interest.

First, the Committee would like to see an amount on the order of \$1 million appropriated to the Department of Commerce to enable it to develop and begin to implement a serious plan of action for dealing with the growing net entanglement problem. The Commit-

tee received testimony during the reauthorization hearing that some 50,000 north Pacific fur seals are being killed each year as a direct result of net entanglement. In addition, hundreds of thousands of other marine mammals and seabirds are being killed.

The problem is also of particular concern to the commercial fishing industry since there is considerable evidence that a significant percentage of valuable fishery stocks may be going to waste by virtue of "ghost fishing" by lost or discarded fishing nets. The Committee will be looking into the entanglement issue in more detail later in the year, but in the mean time would like to see a vigorous program begun by the Department of Commerce to deal with the problem immediately. In any event, the Committee expects the National Marine Fisheries Service to make maximum preparations for the November net entanglement workshop in Honolulu and to develop a thorough action plan for alleviating the net entanglement problem that can be addressed at the workshop.

Concern has also been expressed about the need for additional research into marine mammal and fishery interactions and the effect of these interactions on the food chain in the north Pacific. Insufficient information exists for scientists to make a determination of how the food chain works. It is logical to assume that increasing levels of commercial fish harvests in the north Pacific, combined with expansion in several populations of marine mammals, is putting increasing pressure on the food supply. The Committee would like to see approximately \$500,000 devoted to research on this issue, and recommends that this research be done in conjunction with work by the Alaska Department of Fish and Game.

The third issue of concern is the research program which is called for in section 4 of the bill. The Committee has directed the Secretary of Commerce to conduct research into the status of marine mammal stocks in the Eastern Tropical Pacific. The Committee has also directed that this research program focus on alternative fishing methods, including new ways of locating tuna and possible new gear types. Since the Committee believes that the ultimate solution to the tuna-porpoise problem will be the harvesting of tuna in ways that do not entail endangering porpoise, the Committee would like to see the Department of Commerce pursue research in this area as well as into stock sizes and population trends.

SECTION 2

Requires that the list of prospective nominees to the Marine Mammal Commission be the unanimous choices of the four agencies responsible for reviewing Commission candidates. The four agencies involved are: (1) National Science Foundation, (2) National Academy of Sciences, (3) Smithsonian Institution, and (4) Council on Environmental Quality.

These agencies review potential Commission nominees and submit a list of qualified candidates to the President. This amendment makes it clear that this list is to consist of the unanimous choices of the four agencies, and is to be submitted only after full

consultation among the agencies. This will help to insure that the President is choosing from the best possible candidates.

SECTION 3

Requires the Marine Mammal Commission to be staffed at a level of not fewer than 11 employees. It is the view of the Committee that the staff reductions which have taken place at the Commission over the past several years are detrimental to the agency's responsibilities under the act. A minimum of eleven employees are necessary if the Commission is to function effectively.

SECTION 4

Subsection (a) imposes a requirement on foreign nations which export tuna to the United States to demonstrate that they are enforcing against their own tuna vessels porpoise-protection regulations no less protective than the regulations of the United States.

This subsection requires such a foreign nation to submit to the Secretary of Commerce satisfactory documentary evidence that (1) it has adopted and enforces a legally-binding regulatory program governing the incidental taking of marine mammals by its tuna vessels that is no less protective than the U.S. tuna-porpoise program; and (2) the kill rate of marine mammals in tuna fishing during the year preceding the import authorization request is substantially equivalent to the comparable rate by U.S. vessels. Without such documentation, tuna imports would be banned. Satisfactory documentary evidence could include detailed observer reports on tuna fishing operations by the vessels of the country concerned.

Section 4 also provides an extension of the marine mammal permit currently held by the American Tunaboat Association.

The Committee feels that given the admirable progress made by the tuna industry in reducing the incidental take of porpoise, little would be gained by going through another Department of Commerce permit hearing once the current permit expires.

However, in taking this action the Committee wishes to make several points about the permit's extension. First, a number of changes are being made in the permit in conjunction with its extension. Specific quotas for incidental take are being included for coastal spotted dolphin and eastern spinner dolphin. The tuna industry has indicated that it will be able to comply with these quotas.

Second, the term and condition found in the current permit regarding accidental taking shall not apply to the new permit. This term and condition is described in 50 CFR 216. 24(d)(2)(i)(C).

Third, the condition under which the permit is being extended gives the National Marine Fisheries Service the authority to change certain regulations to guidelines in those cases where the agency feels such a change is justifiable.

The Committee also wishes to clarify the intent of the permit extension as it regards the Federal observer program. The current permit requires American tunaboat operators to accept the placing of Federal observers aboard their vessels. These observers are on-board for the act's research, monitoring, and enforcement purposes.

The tuna industry has contested the legal authority of the Department of Commerce in placing observers aboard tuna vessels for enforcement purposes. The issue is now before the Supreme Court. The Committee believes that the Department of Commerce does have the authority to place observers aboard tuna vessels for enforcement purposes, but at the same time, the Committee realizes that this issue has yet to be ruled on by the Supreme Court. With this in mind, the committee has decided to extend the current marine mammal permit, and thereby extend the requirement for observers to be placed aboard tuna vessels.

The Committee intends for its action in extending the permit to be viewed as a Congressional mandate of the observer system even in the event that the Supreme Court finds that the language of the original Marine Mammal Protection Act of 1972 was lacking in providing authority to the Department of Commerce regarding its ability to enforce the act through the placing of observers on tuna vessels.

Another portion of section 4 of the bill which should be clarified regards the requirement that the Secretary of Commerce conduct research into the condition of marine mammal stocks in the Eastern Tropical Pacific Ocean. This section directs the Secretary to "take such action as is necessary" in the event that this research shows that tuna fishing is having a "significant adverse effect" on these marine mammal stocks. The Committee wishes to make it clear that a "significant adverse effect" would be a situation in which the incidental take of marine mammals by the tuna industry is the direct cause of a continuing overall decline in the population of these stocks. Population declines due to natural causes would not be sufficient grounds for the alteration of quotas or fishing practices.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in *italic*, existing law in which no change is proposed is shown in roman):

THE ACT OF OCTOBER 9, 1981

SECTION 7 OF THAT ACT

SEC. 7. (a) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out such functions and responsibilities as it may have been given under title I of the Marine Mammal Protection Act of 1972, \$7,223,000 for fiscal year 1982, \$8,000,000 for fiscal year 1983, [and] \$8,800,000 for fiscal year 1984, *\$9,300,000 for fiscal year 1985, \$9,800,000 for fiscal year 1986, \$10,300,000 for fiscal year 1987, and \$10,800,000 for fiscal year 1988.*

(b) There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out such functions and responsibilities as it may have been given under such title I, \$1,600,000 for fiscal year 1982, \$1,760,000 for fiscal year 1983,

[and] \$2,000,000 for fiscal year 1984, \$2,300,000 for fiscal year 1985, \$2,400,000 for fiscal year 1986, \$2,500,000 for fiscal year 1987, and \$2,650,000 for fiscal year 1988.

(c) There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out title II of such Act of 1972, \$672,000 for fiscal year 1982, \$1,000,000 for fiscal year 1983, [and] \$1,100,000 for fiscal year 1984, \$1,155,000 for fiscal year 1985, \$1,225,000 for fiscal year 1986, \$1,275,000 for fiscal year 1987, and \$1,325,000 for fiscal year 1988.

THE MARINE MAMMAL PROTECTION ACT OF 1972

SECTION 101 OF THAT ACT

SEC. 101. (a) There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) * * *

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 subject to regulations prescribed by the Secretary in accordance with section 103. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. The Secretary shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States. *In making such determination concerning the importation into the United States of yellowfin tuna, the Secretary shall require satisfactory documentary evidence from the government of any fishing nation seeking authorization to import into the United States yellowfin tuna caught with purse seines that—*

(i) it has adopted and enforces a legally binding regulatory program governing the incidental taking of marine mammals by its flag vessels in the course of such commercial fishing that is no less protective than that of the United States; and

(ii) beginning no later than January 1, 1986, the average rate (kill per ton of yellowfin tuna caught in association with porpoise) of such incidental taking by its flag vessels during the year preceding the request to import is substantially equivalent to the comparable rate of incidental taking by flag vessels of the United States.

(3)-(5) * * *
(b) * * *

SECTION 104 OF THAT ACT

Sec. 104. (a)-(g) * * *

(h)(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue general permits for the taking of such marine mammals, together with regulations to cover the use of such general permits.

(2)(A) Subject to subparagraph (B) of the paragraph, the general permit issued under paragraph (1) of this subsection on December 1, 1980 to the American Tunaboat Association is extended to authorize and govern the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna during each year after December 31, 1984.

(B) The extension granted under subparagraph (A) of this paragraph is subject to the following conditions:

(i) the extension shall cease to have force and effect at the time such general permit is surrendered or terminated;

(ii) the permittee and certificate holders shall use the best marine mammal safety techniques and equipment that are economically and technologically practicable; and

(iii) during the period of such extension, the terms and conditions of such general permit that are in effect on the date of the enactment of this paragraph shall apply, except that—

(I) during each year of the extension, not to exceed 250 coastal spotted dolphin (*Stenella attenuata*) and not to exceed 2750 eastern spinner dolphin (*Stenella longirostris*) may be incidentally taken within the total number that may be taken under the general permit;

(II) The term and condition of the general permit concerning accidental taking shall not apply; and

(III) any modification resulting from the monitoring program required under paragraph (3)(A) of this subsection or form determinations relating to permit administration and to the need for fishing gear and practices shall supersede any of such terms and conditions (including a reduction of the quotas under subclause (I) of this clause) that are contrary to, or inconsistent with, that modification.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least 5 consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. If the Secretary determines, on the basis of the best scientific information

available (including information obtained under such program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) of this subsection in having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that such marine mammal population stock is not significantly adversely affected by the incidental taking.

(B) For each calendar year after calendar year 1984, the Secretary shall include in the annual report to the public and the Congress under section 103(f) of this title a discussion of the proposed activities to be conducted each year as part of the program required by subparagraph (A) of this paragraph. If the Secretary determines that any such research (or research on new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, as require under section 110(a) of this title) is desirable and feasible but cannot be conducted because of a lack of adequate funding, the Secretary shall so indicate in such report.

SECTION 201 OF THAT ACT

SEC. 201. (a) * * *

(b)(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a [list, submitted to him by] *single list, submitted to him after consultation among* the Chairman of the Council on Environment Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) * * *

(c)-(e) * * *

SECTION 206 OF THAT TITLE

SEC. 206. The Commission, in carrying out its responsibilities under this title, may—

(1) employ and fix the compensation of such personnel, *but no fewer than 11 employees;*

(2)-(5) * * *

as are consistent with and reasonably required to perform its functions under this title. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in

such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

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